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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345-1789-01]

RIN 0648-AY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Comprehensive Annual Catch Limit Amendment for the South
Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Amended proposed rule; request for comments.

SUMMARY: NMFS hereby amends a proposed rule published on
December 1, 2011, to implement the Comprehensive Annual Catch
Limit Amendment (Comprehensive ACL Amendment) to the Fishery
Management Plans (FMPs) for the Snapper-Grouper Fishery of the
South Atlantic Region (Snapper-Grouper FMP), the Golden Crab
Fishery of the South Atlantic Region, the Dolphin and Wahoo
Fishery off the Atlantic States, and the Pelagic Sargassum
Habitat of the South Atlantic Region as prepared and submitted
by the South Atlantic Fishery Management Council (Council). In
November 2011, the Council's Scientific and Statistical
Committee (SSC) met and determined the allowable biological
catch (ABC) for wreckfish should be reduced to prevent

overfishing from occurring. The proposed rule that published on December 1, 2011 contained a variety of actions unrelated to the wreckfish ABC and those actions did not need to be delayed by further Council decisions with respect to the revised wreckfish ABC. During its December 5-9, 2011 meeting, the Council concurred with the SSC's determination for a revised wreckfish ABC and to develop an amended proposed rule for the Comprehensive ACL Amendment to notify the public of this change to the wreckfish ABC. Based on the new recommended ABC, this rule proposes to reduce the commercial and recreational annual catch limits (ACLs) for wreckfish. The intent of this rule is to specify sector ACLs for wreckfish while maintaining a catch level consistent with achieving optimum yield for the resource.

DATES: Written comments must be received on or before [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2011-0087" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal:
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Rick DeVactor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0087" in the keyword search and click on "search". To view posted comments during the comment period, enter "NOAA-NMFS-2011-0087" in the keyword search and click on "search". NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments through means not specified in this rule will not be accepted.

Electronic copies of the Comprehensive ACL Amendment, which includes a final environmental impact statement, a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/pdfs/Comp%20ACL%20Am%20101411%20FINAL.pdf>. Electronic copies of the additional analyses prepared

for this proposed rule may be obtained from the same Web site.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: rick.devictor@noaa.gov.

SUPPLEMENTARY INFORMATION: Wreckfish are managed under the Snapper-Grouper FMP. The Snapper-Grouper FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

A notice of availability for the Comprehensive ACL Amendment was published on October 20, 2011 (76 FR 65153), with a comment period ending December 19, 2011. A proposed rule for the Comprehensive ACL Amendment was published on December 1, 2011 (76 FR 74757), with a comment period ending December 19, 2011. That proposed rule included measures to: specify ACLs and accountability measures for species in the FMPs for Snapper-Grouper, Dolphin and Wahoo, Golden Crab, and Sargassum; revise the snapper-grouper fishery management unit; establish a daily vessel limit for the recreational possession of wreckfish; create a closed season for the wreckfish recreational sector; prohibit recreational bag limit sales of dolphin from for-hire vessels; and set a minimum size limit for dolphin off most of the South Atlantic states.

The Council's SSC met November 8 - 10, 2011, and evaluated the ABC for wreckfish. NMFS Southeast Regional Office staff gave a presentation at that meeting regarding a depletion-corrected average catch analysis of the wreckfish population. Based on that analysis, the SSC determined the ABC of 250,000 lb (113,398 kg), round weight, was too large and could lead to overfishing. The SSC recommended a smaller ABC of 235,000 lb (106,594 kg), round weight. The Council agreed to this lower ABC at its December 5 - 9, 2011 meeting, and because the Comprehensive ACL Amendment proposes an ACL for wreckfish equal to the ABC for wreckfish, the Council voted to revise the sector ACLs for wreckfish through a second proposed rule to implement the Comprehensive ACL Amendment. The allocation percentages proposed in the Comprehensive ACL Amendment are 95 percent for the commercial sector and 5 percent for the recreational sector. Based on these allocation percentages, the commercial ACL proposed in this rule is 223,250 lb (101,264 kg), round weight, and the recreational ACL is 11,750 lb (5,330 kg), round weight. The commercial ACL would be equivalent to the commercial quota. The codified text contained in this amended proposed rule only includes the further revisions to the wreckfish sector ACLs. The codified text for all other measures in the Comprehensive ACL Amendment is contained in the proposed rule published on December 1, 2011 (76 FR 74757) and is not repeated here.

The most recent recommendation developed by the Council's SSC at their November 2011 meeting retains the use of an ABC Control Rule proposed in the Comprehensive ACL Amendment to determine the wreckfish ABC. The proposed ABC Control Rule contains four levels to characterize the methodologies available to compute the ABC. Each level computes the ABC differently depending on the available information such as landings and life history information. At their August 2010 meeting, the SSC concluded that a control rule based on catch-only data (Level 4) should be used for wreckfish. The SSC also recommended, at their August 2010 meeting, the development of a Depletion-Based Stock Reduction Analysis (Level 2) or Depletion-Corrected Average Catch (DCAC) analysis (Level 3) in the next year to compare with the current catch-only recommendation for wreckfish. A DCAC analysis was completed and the SSC reviewed that analysis and adopted the methodology at their November 2011 meeting to develop a new ABC recommendation for wreckfish, in accordance with the proposed ABC Control Rule contained in the Comprehensive ACL Amendment.

Additionally, at its December meeting, the Council voted to approve Amendment 20A to the Snapper-Grouper FMP (Amendment 20A). Amendment 20A includes actions to revise certain aspects of the individual transferable quota (ITQ) system for the wreckfish sector of the snapper-grouper fishery. Specifically,

Amendment 20A proposes to define and revert inactive wreckfish shares, redistribute reverted shares to remaining shareholders, establish a cap on the number of shares a single entity may own, and establish an appeals process for redistribution of reverted shares. The regulatory flexibility act analysis (RFAA) contained in that amendment examines the effects the proposed actions in Amendment 20A would have on wreckfish shareholders within the snapper-grouper fishery, in combination with the effects of the proposed actions in this amended proposed rule to implement the Comprehensive ACL Amendment.

NMFS requests comments regarding these additional revisions to the codified text. These management measures, as well as the management measures contained in the proposed rule published on December 1, 2011, would be addressed in one final rule to implement the Comprehensive ACL Amendment, if it is approved. No other revisions or changes to the proposed rule to implement the Comprehensive ACL Amendment published on December 1, 2011, are included here. All discussion of the management measures contained in the Comprehensive ACL Amendment are provided in the proposed rule that published on December 1, 2011 (76 FR 74757), and in the Comprehensive ACL Amendment, and are not repeated here.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens

Act, the NMFS Assistant Administrator has determined that this amended proposed rule is consistent with the amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule to amend the Comprehensive ACL Amendment, if adopted, would not have a significant economic impact on a substantial number of small entities (76 FR 74757). The factual basis for this determination is as follows.

The RFAA for the Comprehensive ACL Amendment analyzed all of the measures contained therein and in the rule that published on December 1, 2011. Therefore, the results of that analysis are not repeated here. A copy of the full analysis is available from NMFS (see ADDRESSES).

The purpose of the amendment is to specify an ABC Control Rule, ACLs, and AMs where needed to comply with Magnuson-Stevens Act requirements. The objective of the amendment is to specify measures expected to prevent overfishing and achieve optimum yield while minimizing, to the extent practicable, adverse social and economic effects.

The Magnuson-Stevens Act provides the statutory basis for this rule. This rule would amend the proposed rule to implement the Comprehensive ACL Amendment by reducing the proposed commercial ACL for wreckfish from 237,500 lb (107,728 kg) to 223,250 lb (101,264 kg), round weight, and the proposed recreational ACL for wreckfish from 12,500 lb (5,670 kg) to 11,750 lb (5,330 kg), round weight, the rationale for which is provided in the preamble and is not repeated here.

This rule is expected to directly affect shareholders that possess quota shares and are active in the commercial wreckfish sector of the snapper-grouper fishery. This rule is also expected to directly affect for-hire vessels that possess for-hire snapper-grouper permits in the South Atlantic. The SBA has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

The snapper-grouper fishery in the South Atlantic is a limited access fishery with a cap on the total number of snapper-grouper permits available. In 2010, 598 vessels possessed snapper-grouper unlimited permits and 136 vessels

possessed limited snapper-grouper permits. Thus, a total of 734 vessels possessed limited access permits to harvest snapper-grouper species. Unlimited permit holders may harvest snapper-grouper in unlimited quantities per trip, subject to quotas and ACLs, while limited permit holders may only harvest up to 225 lb (102.1 kg) of snapper-grouper per trip.

The commercial wreckfish sector of the snapper-grouper fishery is managed under an ITQ system. As of November 17, 2011, there were 20 shareholders in the commercial wreckfish ITQ system. The current minimum quota share held by a shareholder is 0.06 percent, the maximum quota share is 20.63 percent, and the average quota share is approximately 5 percent. With respect to the distribution of shares, 13 shareholders own less than 5 percent, 4 shareholders own between 5 percent and 10 percent, 2 shareholders own between 10 percent and 15 percent, and 1 shareholder owns more than 20 percent of the quota shares.

Based on landings data from the 5 most recent fishing years (i.e., 2006/2007 to 2010/2011), 13 of the 20 shareholders had no commercial wreckfish landings during this time and thus are considered inactive. Further, 11 of these 13 inactive shareholders were not commercially active in any fisheries, and thus earned no gross revenue or profit from commercial fishing activities, between 2006 and 2010. The other two inactive shareholders commercially harvested species other than wreckfish

during this time. The extent to which these two shareholders were involved in other commercial harvesting activities differs greatly, as one was only minimally involved and the other significantly involved in such activities. Specific information regarding their landings and gross revenue is confidential and thus cannot be provided, while information regarding their profits is currently not available.

Seven of the 20 shareholders had at least 1 lb (0.45 kg) of commercial wreckfish landings during the five most recent fishing years and thus are considered active. More specifically, these active shareholders' annual wreckfish landings and gross revenue were 32,804 lb (14,880 kg) and \$82,085 on average during this time, respectively. On average, these active shareholders also earned \$90,582 in annual gross revenue from other species during this time. Thus, annual gross revenue from commercial fishing was \$172,668 per active shareholder on average during the 5 most recent fishing years. Information regarding these active shareholders' profits is not currently available. The maximum gross revenue earned by a single active shareholder is confidential information and cannot be reported. However, this figure is less than the SBA threshold for a small business.

Between 2005 and 2009, approximately 2,018 vessels possessed for-hire snapper-grouper permits. For-hire permits do

not distinguish charterboats from headboats and thus the specific number of charterboats with for-hire snapper-grouper permits cannot be estimated. Because wreckfish could not be legally retained by vessels operating under hire during this time, they had no wreckfish landings associated with for-hire harvest. Producer surplus represents profit in the for-hire sector. Producer surplus estimates for snapper-grouper vessels are not currently available. However, because for-hire vessels could not legally retain wreckfish, by definition, producer surplus due to the harvest of wreckfish is zero.

A study on the for-hire sector in the Southeast Region presented two sets of average gross revenue estimates for the charter and headboat sectors in the South Atlantic. The first set of estimates was as follows: \$51,000 for charterboats on the Atlantic coast of Florida; \$60,135 for charterboats in North Carolina; \$26,304 for charterboats in South Carolina; \$56,551 for charterboats in Georgia; \$140,714 for headboats in Florida; and \$123,000 for headboats in the other South Atlantic states. The second set of estimates was as follows: \$69,268 for charterboats and \$299,551 for headboats across all South Atlantic states. Because the second set of estimates were considerably higher than the first set, a new approach was employed that generated the following estimates of average gross revenue: \$73,365 for charterboats in North Carolina, \$32,091

for charterboats in South Carolina; \$68,992 for charterboats in Georgia; and \$261,990 for headboats across all South Atlantic states. Data for Florida were unavailable in the second set of estimates.

Based on the figures above, all active shareholders expected to be directly affected by this rule are determined, for the purpose of this analysis, to be small business entities. Similarly, and regardless of which estimates are used, based on these figures, all for-hire fishing vessels expected to be directly affected by this rule are determined, for the purpose of this analysis, to be small business entities.

For the action to reduce the proposed commercial ACL for wreckfish, the commercial sector's ACL and quota would be reduced from 237,500 lb (107,728 kg) to 223,250 lb (101,264 kg), or by 14,250 lb (6,464 kg), which represents a 6 percent reduction. Thus, in turn, each shareholder's annual allocation of wreckfish would also be reduced by 6 percent. However, due to proposed actions in Amendment 20A to the Snapper-Grouper FMP, the quota shares currently held by the 13 inactive shareholders would be expected to be reverted and redistributed to the 7 active shareholders. As such, the reduction in the commercial sector's ACL and quota would not be expected to directly affect these 13 inactive shareholders and, thus, they are not considered further in this analysis.

With respect to the 7 active shareholders, the expected distribution of shares resulting from the proposed actions in Amendment 20A is as follows: 3.55 percent, 9.05 percent, 11.24 percent, 11.62 percent, 18.38 percent, 23 percent, and 23.16 percent, respectively. Under the original proposed commercial ACL of 237,500 lb (107,728 kg), the average annual allocation of wreckfish per active shareholder is 33,929 lb (15,390 kg). Under the 223,250 lb (101,264 kg) commercial ACL proposed in this rule, the annual allocation per active shareholder would be reduced to 31,893 lb (14,466 kg), or by 2,036 lb (924 kg), reflecting the 6 percent reduction. Thus, the expected loss in annual gross revenue due to the reduction in the commercial ACL is estimated to be \$6,027 on average per active shareholder. This decrease in the active shareholders' gross revenue from wreckfish landings represents a decrease of approximately 3.5 percent in gross revenue from all of their commercial fishing activities on average. Expected reductions in gross revenue overestimate the expected reduction in profits because costs are not taken into account. Thus, this action would be expected to decrease the profits of the seven active shareholders, though likely not significantly, relative to the profits they would earn if the commercial ACL were not reduced.

For the action to reduce the proposed recreational ACL for wreckfish, the recreational sector's ACL would be reduced from

12,500 lb (5,670 kg) to 11,750 lb (5,330 kg), or by 750 lb (340 kg). Although the percent reduction in the recreational ACL is also 6 percent, a reduction of 750 lb (340 kg) is trivial overall and, given that there are 2,018 vessels with for-hire snapper-grouper permits, on a per vessel basis would be approximately 3 lb (1.4 kg). None of these vessels have earned any producer surplus from recreational landings of wreckfish in the past. Further, it is highly likely that only a relatively small number of for-hire vessels may have earned a small amount of producer surplus under the originally proposed recreational ACL, and the proposed reduction would not alter that result. Thus, the reduction in the recreational ACL is not expected to significantly reduce producer surplus for for-hire vessels.

As a result of the information above, a reduction in profits for a substantial number of small entities is not expected. Because this rule, if implemented, is not expected to have a significant direct adverse economic effect on the profits of a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and
recordkeeping requirements, Virgin Islands.

Dated: December 27, 2011

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622,
as proposed to be amended at 76 FR 74757, December 1, 2011, is
proposed to be further amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read
as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.42, the first sentence of paragraph (f) is
revised to read as follows:

§ 622.42 Quotas.

* * * * *

(f) Wreckfish. The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 223,250 lb (101,264 kg), round weight. * * *

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3. In § 622.49, paragraph (b)(18)(ii) is revised to read as follows:

§ 622.49 Annual Catch Limits (ACLs) and Accountability Measures (AMs).

(b) * * *

(18) * * *

(ii) Recreational sector. If recreational landings for wreckfish, as estimated by the SRD, exceed the recreational ACL of 11,750 lb (5,330 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

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